

AMENDED IN ASSEMBLY JUNE 20, 2000

AMENDED IN ASSEMBLY MAY 31, 2000

AMENDED IN SENATE APRIL 10, 2000

AMENDED IN SENATE MARCH 27, 2000

SENATE BILL

No. 2015

Introduced by Senator Sher

February 25, 2000

An act to amend Section 12598 of, and to add Sections 12586.1, 12586.2, 12591.1, and 12591.2 to, the Government Code, relating to charitable fundraising.

LEGISLATIVE COUNSEL'S DIGEST

SB 2015, as amended, Sher. Charitable fundraising.

Under the Supervision of Trustees and Fundraisers for Charitable Purposes Act, charitable corporations or trustees, commercial fundraisers, fundraising counsel, or coventurers who hold or solicit property for charitable purposes are required to file a registration statement and an annual financial report with the Attorney General. The act also authorizes the Attorney General to make any additional rules and regulations that may be necessary for the administration of the act.

This bill would authorize the Attorney General to refuse to register, or to revoke or suspend the registration of, a charitable corporation or trustee, commercial fundraiser, fundraising counsel, or coventurer whenever the Attorney General finds that the person has violated or is operating in

violation of the act. The bill would subject the actions of the Attorney General to the administrative adjudication provisions of the Administrative Procedure Act. The bill would also authorize a late fee for the failure to register, be bonded, complete annual reports within specified time periods, timely file the annual registration/renewal form, or correct deficiencies in a registration or an annual report, as specified.

The bill would also make any person who violates the act liable for a civil penalty. It would authorize the Attorney General to accept an assurance of voluntary compliance through which any person alleged to be engaged in any method, act, or practice in violation of the act agrees to discontinue that method, act, or practice.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12586.1 is added to the
2 Government Code, to read:
3 12586.1. In addition to a registration fee, a charitable
4 corporation or trustee, commercial fundraiser,
5 fundraising counsel, or coventurer may be assessed a late
6 fee or an additional fee of twenty-five dollars (\$25) for
7 each month or part of the month after the date on which
8 the registration statement and financial report were due
9 to be filed or after the period of extension granted for the
10 filing if the charitable corporation or trustee, commercial
11 fundraiser, fundraising counsel, or coventurer does any of
12 the following:
13 (a) Exists and operates in California without being
14 registered.
15 (b) Solicits contributions in California without being
16 registered or, if applicable, bonded.
17 (c) Fails to file its first report no later than four months
18 and 15 days following the close of each calendar or fiscal
19 year and has not requested an extension of time to file the
20 annual report.



(d) Fails to file its subsequent annual report no later than four months and 15 days following the close of each calendar or fiscal year subsequent to the filing of the first report and has not requested an extension of time to file the annual report.

(e) Fails to file its annual registration/renewal form within the time specified by the Attorney General irrespective of other report filing requirements.

(f) Fails to correct the deficiencies in its registration or annual report within 10 days of receipt of written notice of those deficiencies.

SEC. 2. Section 12586.2 is added to the Government Code, to read:

12586.2. All fines, penalties, attorney's fees, if any, as authorized by law, and costs of investigation paid to the Attorney General pursuant to this article shall be used by the Department of Justice solely for the administration and enforcement of this article, upon appropriation by the Legislature.

SEC. 3. Section 12591.1 is added to the Government Code, to read:

12591.1. (a) Any person who violates any provision of this article with intent to deceive or defraud any charity or individual is liable for a civil penalty not exceeding ten thousand dollars (\$10,000).

(b) ~~Any~~ *Except as provided in subdivision (d), any* person who violates any other provision of this article is liable for a civil penalty, as follows:

(1) For the first offense, a fine not exceeding one thousand dollars (\$1,000).

(2) For any subsequent offense, a fine not exceeding two thousand five hundred dollars (\$2,500).

(c) Any offense committed under this article involving a solicitation may be deemed to have been committed at either the place at which the solicitation was initiated or at the place where the solicitation was received.

(d) *Any person who violates only subdivision (c), (d), (e), or (f) of Section 12586.1 shall not be liable for a civil penalty under subdivision (b) if the person (1) has not*

1 *received reasonable notice of the violation and (2) has*
2 *not been given a reasonable opportunity to correct the*
3 *violation. The Attorney General shall notify in writing a*
4 *person who violates only subdivisions (c), (d), (e), or (f)*
5 *of Section 12586.1 that he or she has 30 days to correct the*
6 *violation.*

7 *(e) The recovery of a civil penalty pursuant to this*
8 *section precludes assessment of a late fee pursuant to*
9 *Section 12586.1 for the same offense.*

10 SEC. 4. Section 12591.2 is added to the Government
11 Code, to read:

12 12591.2. In any case where the Attorney General has
13 authority to institute an action or proceeding under this
14 article, he or she may accept an assurance of voluntary
15 compliance through which any person alleged to be
16 engaged in any method, act, or practice in violation of this
17 article agrees to discontinue that method, act, or practice.
18 The assurance may, among other terms, include a
19 stipulation of a voluntary payment by the person of the
20 cost of the investigation or of an amount to be held in
21 escrow pending the outcome of an action or as restitution
22 to aggrieved persons, or both. The assurance of voluntary
23 compliance shall not be considered an admission of a
24 violation for any purpose. The assurance of compliance
25 shall be in writing and shall be filed with a superior court
26 in this state for approval and if approved shall thereafter
27 be filed with the clerk of the court. Matters closed may at
28 any time be reopened by the court for further
29 proceedings in the public interest. In the event of an
30 alleged violation, the Attorney General may, at his or her
31 discretion, either initiate contempt proceedings or
32 proceed as if the assurance of voluntary compliance has
33 not been accepted.

34 SEC. 5. Section 12598 of the Government Code is
35 amended to read:

36 12598. (a) The primary responsibility for supervising
37 charitable trusts in California, for insuring compliance
38 with trusts and articles of incorporation, and for
39 protection of assets held by charitable trusts and public
40 benefit corporations, resides in the Attorney General.



1 The Attorney General has broad powers under common
2 law and California statutory law to carry out these
3 charitable trust enforcement responsibilities. These
4 powers include, but are not limited to, charitable trust
5 enforcement actions under all of the following:

6 (1) This article.

7 (2) Title 8 (commencing with Section 2223) of Part 4
8 of Division 3 of the Civil Code.

9 (3) Division 2 (commencing with Section 5000) of
10 Title 1 of the Corporations Code.

11 (4) Sections 8111, 11703, 15004, 15409, 15680 to 15685,
12 16060 to 16062, 16064, and 17200 to 17210, inclusive, of the
13 Probate Code.

14 (5) Chapter 5 (commencing with Section 17200) of
15 Part 2 of Division 7 of the Business and Professions Code,
16 and Sections 17500 and 17535 of the Business and
17 Professions Code.

18 (6) Sections 319, 326.5, and 532d of the Penal Code.

19 (b) The Attorney General shall be entitled to recover
20 from defendants named in a charitable trust enforcement
21 action all actual costs incurred in conducting that action,
22 including the costs of auditors, consultants, and experts
23 employed or retained to assist with the investigation,
24 preparation, and presentation in court of the charitable
25 trust enforcement action.

26 (c) Costs shall be recovered by the Attorney General
27 pursuant to court order. At the time of entering judgment
28 or approving settlement of a charitable trust
29 enforcement action, as defined in subdivision (a), the
30 court shall make findings on whether the Attorney
31 General's action has resulted in pecuniary benefits or
32 corrected a breach of trust for any charitable
33 organization, or charitable purpose. If the court finds in
34 the affirmative, the court shall award recovery of costs in
35 the charitable trust enforcement action to the Attorney
36 General and shall order that costs be paid by the
37 charitable organization and the individuals named as
38 defendants in or otherwise subject to the action, in a
39 manner that the court finds to be equitable and fair. The
40 court shall not award costs pursuant to this subdivision

1 which exceed one-third of the pecuniary benefit to any
2 charitable organization or charitable purpose realized by
3 the Attorney General's action.

4 (d) All moneys received by the Department of Justice
5 pursuant to this section shall be deposited into the
6 General Fund and shall be used to offset the costs of
7 future charitable trust enforcement actions by the
8 Attorney General.

9 (e) Upon a finding by the court that a lawsuit filed by
10 the Attorney General was frivolous or brought in bad
11 faith, the court may award the defendant charity the costs
12 of that action.

13 (f) (1) The Attorney General may refuse to register
14 or may revoke or suspend the registration of a charitable
15 corporation or trustee, commercial fundraiser,
16 fundraising counsel, or coventurer whenever the
17 Attorney General finds that the charitable corporation or
18 trustee, commercial fundraiser, fundraising counsel, or
19 coventurer has violated or is operating in violation of any
20 provisions of this article.

21 (2) All actions of the Attorney General shall be taken
22 subject to the rights authorized pursuant to Chapter 4.5
23 (commencing with Section 11400) of Part 1 of Division 3
24 of Title 2.

